IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 11820 of 2004

Between:

1 The Deputy Inspector General of Prisons Coastal Andhra Region, Rajahmundry.
2 The Superintendent of Prisons Central Prison, Rajahmundry East Godavari District.

..... PETITIONERS

AND

Sri V.B.N.V Ram Prasad, Warder Central Prison, Rajahmundry
(Under unders of transfer)
East Godavari District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction more particularly one in the nature of writ of certiorari calling for the records connected with order dated 26.2.2003 in O.A No.7909/2003 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and to quash the same as erroneous and contrary to law and pass such other orders.

Counsel for the Petitioners: G.P. FOR SERVICES I

Counsel for the Respondent : Kanakamedala Ravindra Kumar

The Court made the following:

ORDER **(per the Hon'ble Sri Justice Goda Raghuram)**:

The respondent was a Warder in the Central Prison in Rajahmundry. On allegations of mis-conduct with the medical officer on 08-05-2003, he was placed under suspension pending enquiry on 13-05-2003. Disciplinary proceedings were initiated and by proceedings dated 27-11-2003 the punishment of stoppage of one annual grade increment with cumulative effect was imposed. By proceedings dated 29-11-2003, his suspension pending enquiry was revoked. However, in purported exercise of the exemption Clause (i) under para 2 of G.O.Ms.No.767 Finance (W&M) Department, dated 21-08-2002, he was transferred and posted to the Sub-Jail, Bapatla, on revocation of his suspension, to an existing vacancy.

Assailing the transfer, he filed O.A.No.7909 of 2003 before the A.P. Administrative Tribunal, which was allowed by the order dated 26-02-2002. The singular ground on which the respondent challenged the order of transfer before the Tribunal was that there was a general ban imposed on transfers in G.O.Ms.No.767 Finance (W&M) Department, dated 21-08-2002. Para 2 thereof set out the exemptions from the general ban in certain situations including on account of disciplinary proceedings. As the disciplinary proceedings against him have concluded by the order dated 27-11-2003, there is no power or justification to transfer him, is the contention.

Clause (i) of Para 2 of G.O.Ms.No.767 Finance (W&M) Department, dated 21-

08-2002, reads as under:

> "(i) Transfers which are inevitable on account of disbandment of posts, reversion, retirements, promotions, repatriations, deputations and disciplinary Proceedings."

On a true and fair construction of the Clause, it is apparent that the exemption from the general ban on transfers is not limited only to the pending disciplinary proceedings. Even when disciplinary proceedings are concluded, if in the context of the result of the disciplinary proceedings, it rationally appears to the competent authority that a transfer is necessary in public interest, such a situation would come within the exempted ambit of Clause (i) of para 2 of G.O.Ms.No.767. The Tribunal was clearly in error in concluding to the contrary.

On the analysis above, the Writ Petition is allowed. However, no order as to costs.

_____

J. CHELAMESWAR, J

_____

GODA RAGHURAM, J

3rd September, 2004

lsn/Pvks

To

1. Sri V.B.N.V Ram Prasad, Warder Central Prison, Rajahmundry
(Under unders of transfer)
East Godavari District.

2. The Deputy Inspector General of Prisons Coastal Andhra Region, Rajahmundry.
3. The Superintendent of Prisons Central Prison, Rajahmundry
East Godavari District.

4. Two CCs to G.P. for Services-II, High Court Buildings, Hyderabad (OUT).

5. Two CD copies